

FOR YOUR INFORMATION

Tax Information/Policy Office ♦ P.O. Box 630 ♦ Santa Fe, New Mexico 87504-0630

TAXPAYER REMEDIES FOR NATIVE AMERICAN VETERANS INCOME TAX SETTLEMENT FUND

Native American veterans domiciled on tribal lands during their periods of active military service may have been exempt from paying state personal income taxes on their military income, but may have had state personal income taxes withheld from their military income. Such veterans or their successors may claim settlement payments from the Native American Veterans Income Tax Settlement Fund (Section 7-2H-1 NMSA 1978). This publication describes the procedures for protesting the denial of a claim for a settlement payment.

Please note that if you fail to follow the formal remedies outlined below in the time and manner the law requires, you lose the right to use the remedies to address the dispute.

Denial of a Claim

Claims for settlement payments are first reviewed by the New Mexico Department of Veterans Services (DVS). DVS may reject an application for a settlement fund claim if the claimant does not provide satisfactory evidence of his or her active duty in the armed forces of the United States, status as a Native American and domicile on tribal land during a period of active duty. A claimant whose application is denied by DVS may dispute the denial by contacting the Secretary of DVS.

If DVS accepts an application, that agency forwards the application to TRD for review of the claimant's withholding tax records. The claimant can substantiate the withholding tax amount by providing copies of Form W-2 covering active duty military pay for the year(s) during which New Mexico personal income tax was withheld. If a claimant does not have copies of the applicable Form(s) W-2 for one or more of these years, the claimant can request TRD to obtain the claimant's or deceased veteran's Form(s) W-2, or other withholding information in a form approved by TRD, from the United States Department of Defense. The claimant must also provide a signed statement attesting that the claimant or a deceased veteran did not receive a refund of the New Mexico personal income tax withheld for the year(s) for which the claimant is filing a claim for a settlement payment. A claim will be denied if the claimant's withholding tax information cannot be sufficiently documented or verified. TRD must act on a claim within 210 days of the date that it receives the claim from DVS. Claims not acted upon by TRD within 210 days are deemed denied.

Filing a Protest

A claimant whose claim is denied in whole or in part by TRD may dispute the denial by filing with the Secretary of TRD a written protest of the denial.

The claimant's protest must contain the name and address of the claimant and must clearly specify the grounds for the protest. All evidence in support of the protest also must be submitted with the written protest. The Secretary or designated hearing officer for TRD cannot consider any evidence that has not been submitted to the agency at least 10 days prior to the hearing.

New Mexico Taxation and Revenue Department

The claimant must file a written protest within 30 days of the date on which TRD mailed notification of the denial of the claim. A protest should be mailed to:

New Mexico Taxation and Revenue Department
Protest Office
P.O. Box 1671
Santa Fe, NM 87504-1671

Private carriers should deliver protests to:

1100 S. St. Francis Drive, Suite 1100
Santa Fe, NM 87505

A claimant may call the Protest Office at (505) 827-0913.

Upon timely receipt of a protest, the agency must promptly set a date for hearing and on that date hear the protest. The hearing must be scheduled no later than 90 days after the filing of the written protest. The agency must mail a notice of the hearing to the protestant no less than 15 days prior to the date of the hearing. The Secretary of TRD may designate a hearing officer to conduct the hearing. The claimants may appear at a hearing on their own behalf, have the assistance of an advocate or be represented by an attorney. Hearings are not open to the public except upon request of the claimant and may be postponed or continued at the discretion of the secretary or hearing officer.

The technical rules of evidence and the rules of civil procedure do not apply in the hearings, but hearings must be conducted so that claims are amply and fairly presented. The claimant has the burden of proving that the denial of the claim was improper.

A complete record of the proceedings will be made, and a written decision must be issued within 30 days of the hearing.

For further assistance, please call (505) 827-2579 or (505) 827-9883.

This publication provides general information. It does not constitute a regulation, ruling, or decision issued by the Secretary of the New Mexico Taxation and Revenue Department. The department is legally bound only by a regulation or a ruling [7-1-60, *New Mexico Statutes Annotated*, 1978]. In the event of a conflict between FYI and statute, regulation, case law or policy, the information in FYIs is overridden by statutes, regulations and case law. Taxpayers and preparers are responsible for being aware of New Mexico tax laws and rules. Consult the department directly if you have questions or concerns about information provided in this FYI.